

DDA Registry  
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STATINTL

Requirement for Agency Industrial Hygienist

DDA 77-1767

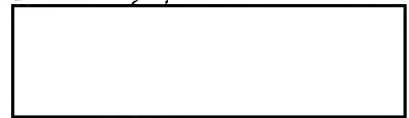
6 April 1977

[Redacted]  
Executive Officer, DDA

OGC Has Reviewed

STATINTL

Attached is a copy of  
OGC's opinion concerning the  
requirement for the Agency  
to have on board an Indus-  
trial Hygienist.



Attachment

STATINTL

EO/DDA/[Redacted] 1m (6 Apr 77)

Distribution:

Orig RS - D/OMS w/cy att  
1 RS - C/OS/Safety Branch,  
w/cy att

① RS - DDA Subject w/Orig at  
1 RS - DDA Chrono

Attachment: DDA 77-1767, Memo  
for DDA from Asst General  
Counsel, dated 31 March 77,  
Subject: Requirement for Agency  
Industrial Hygienist.

1 RS - RFZ Chrono

1 cy att HGB 4-15-77

77-1767

OGC 77-2087

31 March 1977

MEMORANDUM FOR: Deputy Director for Administration

FROM

:

Assistant General Counsel

SUBJECT : Requirement for Agency Industrial Hygienist

1. Pursuant to Recommendation 14 of the Inspector General's survey of the Directorate of Administration, the question has been addressed to this Office whether the Occupational Safety and Health Act (P.L. 91-596) requires this Agency to have an Industrial Hygienist on its staff.

2. The Act contains no specific language to this effect. But it does, at Section 19, place the responsibility upon the head of each federal agency to establish and maintain an effective and comprehensive occupational safety and health program, by taking such steps as providing safe and healthful places and conditions of employment, and acquiring, maintaining and requiring the use of safety equipment, personal protective equipment, and devices reasonably necessary to protect employees. (29 U.S.C. 668)

3. In our opinion, the placement of this broad responsibility upon an agency head has the same effect as a specific statement concerning an industrial hygienist, if such an expert is found to be necessary to the achievement of the working environment described in the Act.

4. We have also consulted the Executive Order and the Department of Labor guidelines associated with this Act, in the process of making this response. These documents are only slightly more specific than the Act itself.

5. Executive Order 11807 directs that each agency head shall, among other things, "assure periodic inspections of agency workplaces by personnel with sufficient technical competence to recognize unsafe and unhealthful working conditions in such workplaces;" [Executive Order 11807, Sub-section 2(3)].

6. The guidelines promulgated by the Secretary of Labor, which are made obligatory upon the heads of federal agencies by this same Executive Order, contain several passages which are pertinent here. For example, 29 C.F.R. 1960.16(a) states in part that the official designated by the agency head to be responsible for the management and administration of the agency occupational safety and health program "...[S]hould have sufficient headquarters staff with necessary training and experience ...." And, 29 C.F.R. 1960.16(c) states: "The designated safety and health official should assist the agency head in taking appropriate steps to provide sufficient funds for necessary safety and health staff, equipment, material, and training required to insure an effective agency occupational safety and health program."

7. And, concerning safety inspections, 29 C.F.R. 1960.26(a) states in part:

For workplaces where there is an increased risk of accident, injury or illness due to the nature of the work performed, as in the case of chemical or machine processes or material-handling or loading operations, inspections should therefore be made by a safety and health specialist, as defined in 1960.2(h)."

Several types of specialists or specialty areas are set out in the definition, including "... Industrial Hygienist GS-690 ... or equally qualified military, agency or nongovernment personnel." [29 C.F.R. 1960.2(h)]

8. Neither the Act nor the several documents implementing it specifically require the presence of an Industrial Hygienist on the staff of a Federal Government agency. However, a clear implication is gained from them, in our opinion, that such a specialist should be present if the official designated to manage and implement an agency's safety program determines that such expertise is necessary in order to achieve the type of working environment described in the Act.

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